

In the Court of Appeals of the State of Alaska

Joe Angel Garcia,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13054**

Order

Date of Order: **April 20, 2020**

Trial Court Case No. **3PA-16-00671CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Joe Angel Garcia Jr. was convicted, after a jury trial, of multiple felony counts related to the burglary of a home-based marijuana operation.

Garcia has appealed his convictions to this Court, arguing that the superior court made several erroneous rulings that prejudiced him: allowing the investigating officer to testify as a “human polygraph,” allowing the prosecutor to cross-examine Garcia regarding his pre-arrest silence, and failing to sua sponte intervene after the prosecutor repeatedly made improper closing arguments. Garcia argues that the cumulative prejudice caused by these errors requires the reversal of his convictions.

The State has filed a brief conceding that Garcia’s convictions must be reversed based on the cumulative prejudice caused by these errors.

Garcia separately argues that the superior court erred by refusing to give an instruction pursuant to *Thorne v. Department of Public Safety* based on the State’s alleged failure to preserve the thumb drive that one of the victims gave to law

enforcement.¹ On this point, the State opposes, arguing that the court properly declined to give a *Thorne* instruction.

After the State filed its brief, Garcia filed a motion for expedited consideration of his appeal in light of the State’s concessions of error and the COVID-19 pandemic. Garcia notes that if we agree with the State’s concessions of error and reverse his convictions, he would immediately become entitled to seek pre-trial bail release pending retrial. Garcia therefore requests that we essentially bifurcate our decision in his appeal and decide the cumulative error issue as soon as possible, with a full explanation of our reasoning, and a decision on the *Thorne* issue, to follow. (Garcia recently filed a reply brief addressing the *Thorne* issue.)

As we stated in our recent bail review order in *Karr v. State*, “Incarcerating a defendant under conditions that do not permit compliance with widespread health directives designed to halt the spread of the virus poses significant health risks not only to other inmates and to correctional facility staff, but also to the rest of the public.”²

Based on these circumstances, we agree with Garcia’s proposed resolution of his case. We have also reviewed the State’s concessions of error, and we conclude that they are well founded.³

Accordingly, IT IS ORDERED:

¹ See *Thorne v. Dep’t of Public Safety*, 774 P.2d 1326, 1331 (Alaska 1989).

² *Karr v. State*, __ P.3d __, 2020 WL 1456469, at *2, Court of Appeals File No. A-13630/13639/40 (Alaska App. March 24, 2020).

³ See *Marks v. State*, 496 P.2d 66, 67-68 (Alaska 1972) (requiring an appellate court to independently assess whether a concession of error “is supported by the record on appeal and has legal foundation”).

1. Garcia’s motion for expedited consideration is GRANTED.
2. The judgment of the superior court is REVERSED, and this case is remanded for a new trial.
3. A written decision explaining our reasoning, and addressing the *Thorne* issue, will follow at a later date.⁴

Entered at the direction of the Court.

Clerk of the Appellate Courts

/s/ R. Montgomery-Sythe

Ryan Montgomery-Sythe,
Chief Deputy Clerk

cc: Court of Appeals Judges
Judge Stohler
Trial Court Clerk

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⁴ See, e.g., *Pebble Ltd. P’ship ex rel. Pebble Mines Corp. v. Lake & Peninsula Borough*, 262 P.3d 598, 601 n.19 (2011) (Winfrey, J., dissenting) (“It is not uncommon for us to consider a case on an expedited basis and issue a summary dispositional order with an opinion to follow[.]”) (citations omitted).